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TAGS: [PGOV](#) [PREL](#) [KDEM](#) [SOCI](#) [ASEC](#) [AU](#) [UNSC](#) [SU](#)
SUBJECT: USG SHOULD EMPHASIZE IMPORTANCE OF CONSENSUS ON SOUTHERN
SUDAN REFERENDUM BILL, SAYS STATE MINISTER

Refs: A. Khartoum 240
[1](#)B. Khartoum 182

[1](#)1. (SBU) Summary. According to Government of National Unity (GNU) State Minister of Justice Wek Mamer Kuol, there has been minimal progress on legislative reform over the past several months, particularly with regard to the National Security Law and the Southern Sudan Referendum Bill. The sticking points on the National Security Law between the National Congress Party (NCP) and the Sudan People's Liberation Movement (SPLM) remain the same - the NCP wants the National Security and Intelligence Service (NISS) to retain its broad arrest and detention authority, while the SPLM says it should only be an information-gathering service that has the right to advise other agencies on security measures. There has been no discussion on the Southern Sudan Referendum Bill since the NCP insisted that the two parties first hammer out post-2011 arrangements (on wealth-sharing, water-sharing, debt repayment, etc). The National Assembly is currently debating the press/media bill and three others. International human rights watch groups have publicly criticized the reformed press/media bill, saying that it doesn't adequately lift repressive measures that will allow for an independent media. Wek said that the USG's assistance is needed in pressuring the parties to reach consensus on the southern Sudan Referendum Bill so that it can be tabled for the Parliament's review during the current session. The Bill is the one piece of legislation that could cause the parties to return to war, said Wek. End Summary.

[1](#)2. (SBU) On April 22, GNU State Minister of Justice Wek Mamer Kuol (SPLM) provided poloff with an update on key national legislation, including the National Security Law, the Press/Media Law, and the Southern Sudan Referendum Bill. Poloff last met with Minister Wek in late February 2009 for a legislation status update; unfortunately, there has been very little progress on the legislation over the last two months, according to Wek (ref A).

STATUS OF BILLS IN THE NATIONAL ASSEMBLY

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[1](#)3. (SBU) Five bills have been tabled for the National Assembly's review and ratification since the Assembly's opening on April 6. Only one of them - the Human Rights Commission Law - has been ratified; the rest, which include the Media/Press Bill, the Land Commission Bill, and the Criminal and Civil Procedures Bills - remain under debate. Before reaching the Assembly, the bills were agreed upon by the NCP-SPLM joint legal and/or joint political executive committees, except for the Criminal Procedures Bill (also known as the Penal Code). According to Wek, the NCP and SPLM had agreed upon a Criminal Procedures Bill which included a chapter on humanitarian law (Chapter 18). Chapter 18 addressed criminal procedures for those found guilty of genocide, crimes against humanity, terrorism, and other violations of international

humanitarian law. Wek explained that the NCP "smuggled" the agreed-upon bill minus Chapter 18 into Parliament so as to avoid having the bill address crimes for which GNU President Al-Bashir and his henchmen have been indicted by the International Criminal Court (ICC). According to Wek, there is a big row in the Assembly over what happened to Chapter 18. "They [the NCP] are doing dirty things," said Wek.

14. (SBU) Wek was positive about the reformed Media/Press Law, which went through several iterations between the parties prior to being tabled for the Assembly's review. Previously, there was disagreement between the parties on whether a media code of conduct should be included in the law (reftels). Ultimately, the parties decided that it wasn't necessary. Wek said the intent with the reformed law is to create an independent, free media that is not subjected to the powers of the executive or legislative branch. Wek noted that the bill could be amended in the National Assembly. As with all things in Sudan, the proof of the pudding in terms of a reformed environment for the press/media will be in the implementation of the reformed law, he said. [Note: Human Rights Watch and other international rights group have heavily criticized the latest version of the reformed bill, stating that it retains many repressive provisions that do not adequately protect the freedom of speech nor allow for an independent media. This raises considerable concern that the media environment will not change, and that the changes adopted by the parties are more cosmetic than substantive. End note.]

BILLS UNDER HEATED DEBATE BETWEEN THE PARTIES

15. (SBU) Three laws remain under heavy debate between the parties - the National Security Law, the southern Sudan Referendum Law, and

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the Trade Union Act. The Security Law, which is being debated at the level of the SPLM-NCP political executive committee (chaired by GNU Vice President Taha and Government of Southern Sudan Vice President Machar) is subject to an intense back-and-forth between the parties. Wek said that the main sticking points have not changed - the National Intelligence and Security Services' (NISS) power of arrest and the method of selection for the NISS Director and his deputies (refetl). Wek showed poloff the NCP's latest version of the draft bill, which he said was "worse than its previous version." He pointed to one example as the NCP's change of wording to refer to NISS as a "regular organized force" rather than a "service." According to Wek, this is dangerous because it provides NISS with its own military or police-like authority. Wek says the two parties continue to disagree on the basic authorities and responsibilities of NISS. The SPLM contends that it should only be an intelligence-gathering service that advises and recommends security measures to other authorities (such as the Attorney General's Office), while the NCP argues that it should have broad arrest and detention authorities.

16. (SBU) Wek noted that there has been no progress on the Southern Sudan Referendum Bill for months. According to the State Minister, the SPLM is still waiting for the NCP's post-2011 arrangements proposal before negotiating on the Referendum Bill (a stipulation made by the NCP). Wek noted that if the USG is to help pressure the parties into legislative reform, it should focus its efforts on the Southern Sudan Referendum Bill, so that a Commission can be established and referendum preparation can get underway. "I would appreciate it if the USG could emphasize the need for consensus to be reached on the Referendum Bill, because it is the one piece of legislation that if not agreed upon, could convince people to go back to war," said Wek.

BILLS OUTSTANDING WITH THE NCP

17. (SBU) At least a dozen more bills are outstanding with the NCP for its review, said Wek. These include laws on public service, customs, civil defense, telecommunications, civil records, banking, the Abyei referendum, the popular consultations in Blue Nile and Southern Kordofan, and others (reftels).

COMMENT

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18. (SBU) The GNU's track record of substantive reform on national legislation since the signing of the CPA has been disappointing. The CPA parties have been engaged in a painfully slow process of incremental give and take on some legislation, while debate on other legislation is completely stalled, and reform of the media/press law is not what the international community had hoped. The NCP has shown that it is completely unwilling to budge on the powers of NISS. This is not surprising, as NISS is the regime's strongest tool for retaining control over the state apparatus and staying in power. Also not surprising is the fact that the NCP has hijacked the debate on the Southern Sudan Referendum Bill, holding it hostage in exchange for the SPLM's agreement on post-2011 arrangements; the NCP would prefer to delay this discussion (and the referendum) as long as possible. However, it is a risky course of action, since attaining a free and fair referendum on secession is the core political objective of the SPLM and ninety percent of southerners (according to polling data). While the pace and substance of legislative reform has been sub-par, Wek correctly points out that the one bill - if not agreed to by the parties and passed by the National Assembly - that can cause this country to go back to war is the Referendum Bill. The USG should put emphasis on the parties' need to reach consensus on this bill quickly so that 2011 referendum preparation (the end game of the CPA, particularly for the South) can get underway in a peaceful fashion. This can best be achieved through trilateral discussions on CPA implementation between SE Gration, the SPLM, and the NCP. The USG should also emphasize that post-2011 arrangements in the event of unity or separation are important and should begin immediately begin, but should be delinked from the negotiation and passage of the Southern Sudan Referendum Law. The referendum must occur regardless of what assurances are provided to the North, though it is in the interests of all Sudanese to ensure that this is a peaceful process. Assurances on oil wealth sharing (whether in the form of transit fees or some other formulation), debt burden sharing, and other issues are the best way of promoting a peaceful process to the greatest extent possible. End Comment.

FERNANDEZ